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10 Attorney for Trustee
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12 IN THE UNITED STATES BANKRUPTCY COURT
13 FOR THE EASTERN DISTRICT OF CALIFORNIA
14 (Modesto Division)

15 In re:) Case No: 09-93545
16 Bejendra Prasad and) Chapter 7 Case
17 Malti Kalidin,) DC No. CWC-3
18 3124 Collingham Dr.)
19 Modesto, CA 95355)
20 S.S. xxx-xx-2427)
21 S.S. xxx-xx-1341) Date: December 21, 2011
22 Debtors.) Time: 10:30 a.m.
23) Place: Modesto Courtroom
24) Department E

25 **MOTION FOR AUTHORIZATION TO SELL NON-EXEMPT
26 EQUITY IN PERSONAL PROPERTY TO DEBTORS
27 FREE AND CLEAR OF LIENS**

28 To: The Honorable Ronald H. Sargis, U.S. Bankruptcy Judge:
29 The Chapter 7 Trustee, Stephen C. Ferlmann, pursuant to
30 Bankruptcy Code § 363(f) and Federal Rule of Bankruptcy Procedure
31 6004, respectfully moves the Court to sell to the Debtors their
32 non-exempt equity in the M&B Minit Mart located at 2307 Oakdale
33 Road, Bldg 8, Suite 5, Modesto, CA in exchange for a payment of
34 \$26,000, and respectfully represents:

35 1. This Court has jurisdiction of this matter under 28
36 U.S.C. §§ 1334 and 157(a).

1 2. The Debtors filed a voluntary Chapter 11 petition on
2 November 3, 2009. On December 2, 2010, the case was converted to
3 a case under Chapter 7. Stephen C. Ferlmann has been appointed
4 Chapter 7 Trustee in the case.

5 3. Among the assets of the Chapter 7 bankruptcy estate is
6 the Debtors' interest in the following personal property (the
7 "Property"), to which the Debtors assigned the following fair
8 market values in their bankruptcy schedules and amendments
9 thereto:

10	a. Interest in M&B Minit Mart,	\$0
11	b. Equipment used in M&B Minit Mart, as described	
12	in the List of Exhibits filed concurrently . . .	\$3,000
13	c. Inventory at M&B Minit Mart	\$78,000
		Total <u>\$81,000</u>

14 4. The Debtors have asserted an exemption in the Inventory
15 at M&B Minit Mart pursuant to California Code of Civil Procedure
16 ("CCP") §703.140(b)(5) in the amount of \$8,750.

17 5. Trustee believes that the Inventory at M&B Minit Mart
18 has a value at cost of approximately \$40,000. Given the
19 exemption claimed by the Debtors in the Inventory in the amount
20 of \$8,750 and the discounted value of the Inventory and the
21 Equipment in a liquidation sale, the Trustee believes that the
22 non-exempt equity in the assets of the M&B Minit Mart business is
23 approximately \$25,000, less costs of marketing and sale.

24 6. Trustee has determined that an additional asset, an Off-
25 Sale Beer & Wine Liquor License Type No. DUP No. 20-448157 with a
26 fair market value of \$1,000 was not disclosed in the Debtors'
27 bankruptcy schedules.

28 7. Debtors wish to retain the above-described property (the

1 "Property") and desire to purchase the non-exempt equity in such
2 Property from the bankruptcy estate.

3 8. Accordingly, the Trustee and the Debtors have entered
4 into an Equity Sale Agreement (the "Agreement") which provides
5 that the Debtors shall pay the bankruptcy estate the total cash
6 sum of \$26,000 for the non-exempt equity in the Property. A copy
7 of the Equity Sale Agreement is attached to the List of Exhibits
8 filed concurrently herewith. The Debtors are purchasing the
9 Property on an "As Is, Where Is" basis. Said sale is without
10 representation or warranties of any kind, express or implied,
11 including without limitation, representations of merchantability
12 and/or fitness for any particular purpose. The Agreement further
13 provides that notwithstanding the Debtors' assertion of an
14 exemption in the Inventory pursuant to CCP §703.140(b)(5) in the
15 amount of \$8,750, the Purchase Amount shall be non-exempt
16 property of the Debtors' bankruptcy estate. Upon payment of the
17 \$26,000, the Debtors shall be entitled to retain possession of
18 the Property and the Property shall cease being property of the
19 bankruptcy estate.

20 9. The Debtors have tendered the \$26,000 to the Trustee,
21 which Trustee will hold in trust pending court approval of the
22 Agreement. In the event the Court does not approve the Agreement
23 or a timely appeal of an order approving the Agreement is taken,
24 the Agreement shall be null and void, the Trustee shall return
25 any part of the purchase amount paid by the Debtors to the
26 Trustee.

27 10. The Trustee is informed and believes that Maher Subhi
28 Aziz may assert a secured claim in this case in the amount of

1 \$138,234. Mr. Aziz filed a UCC-1 Financing Statement with the
2 California Secretary of State on January 24, 2007 as Document No.
3 077100632955 creating a security interest in the following
4 described collateral of the Debtors:

5 All Furniture, Fixtures and Equipment and Inventory of That
6 Certain Mini Mart Business Known as "Glenwood Minit Mart",
7 Conducted at 2307 Oakdale Road, Bldg 8, Suite 5, City of
Modesto, County of Stanislaus, State of California.

8 11. Trustee disputes the validity of this lien to the
9 extent that it was perfected against the Debtors' present
10 inventory which is included in the subject Property being sold.

11 12. Accordingly, the Trustee commenced Adversary Proceeding
12 No. 11-09074, a Complaint to Establish the Nature, Extent and
13 Priority of Lien against Mr. Aziz to resolve this dispute.

14 13. The Trustee does not dispute the validity of Mr. Aziz's
15 lien in the Debtors' present equipment which is included in the
16 subject Property being sold. The Trustee believes that the
17 Debtors' present equipment has a fair market value of \$3,000 as
18 allocated in the Agreement.

19 14. This is an appropriate case for the Court to Order a
20 sale free and clear of liens and interests because of the bone-
21 fide dispute over the validity of Mr. Aziz's lien in the Debtors'
22 present inventory.

23 15. The sale is subject to Bankruptcy Court approval and
24 subject to such overbids as may be received at the time of the
25 hearing and subject to such overbid requirements as the Court may
26 impose. Prior to the hearing on this matter, all third party
27 bidders must deposit \$1,000 in certified funds with the Trustee
28 in order to be eligible to make overbids at the hearing. All
deposits of unsuccessful bidders are fully refundable.

1 16. Said sale represents the Trustee's best efforts to sell
2 the Property for the highest possible price and the Trustee
3 believes that the sale of the non-exempt equity in the Property
4 to the Debtors is in the best interests of the estate and should
5 be approved by the Court. The proposed equity sale is an
6 expeditious manner of liquidating the Property and will eliminate
7 the costs and delays of liquidating the Property by way of public
8 auction.

9 WHEREFORE, Trustee respectfully requests that the Court
10 approve the Agreement, and authorize the Trustee to enter into
11 the proposed sale of the non-exempt equity in the Property to the
12 Debtors free and clear of liens.

13 WHEREFORE, the Trustee, Stephen C. Ferlmann, prays for an
14 Order of this Court:

15 1. Authorizing the Trustee to enter into the proposed sale
16 of the non-exempt equity in the Property to the Debtors for the
17 sum of \$26,000.00 in cash or certified funds upon the above-
18 described terms and conditions;

19 2. Authorizing such overbids as may be submitted at the
20 time of the hearing on this Motion, subject to such terms and
21 conditions as may be required by the Trustee and/or the Court;

22 3. Authorizing the Trustee to sell the Property free and
23 clear of the above-described lien of Maher Subhi Aziz with said
24 lien to attach to the net proceeds and with such proceeds to be
25 placed in a federally insured interest bearing blocked account.
26 Such funds shall be withdrawn only upon further order of this
27 Court;

28 4. Authorizing the execution and delivery by the Trustee of

any and all documents or any other actions which may be necessary
or convenient to conclude the transaction; and

3 5. For such other further relief as the court deems just
4 and proper.

5 Dated: 11-8-11

Respectfully Submitted,

~~Law Office of Carl W. Collins~~

Carl W. Collins
Attorney for Trustee